

CHAPTER 12-44.1

JAILS AND REGIONAL CORRECTION CENTERS

12-44.1-01. Definitions. As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter.
3. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.
4. "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a correctional facility.
5. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
6. "Juvenile detention center" means a publicly or privately established and maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
7. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.
8. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the department of corrections and rehabilitation.

12-44.1-02. Establishing correctional facilities - Correctional facility contracts - Regional corrections centers. For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a correctional facility at county or city expense.
2. Contracting for correctional facility services and use of correctional facilities with another county or city maintaining a correctional facility or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a correctional facility in conjunction with other counties and cities.

A county or city may contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota correctional facility or for the confinement of lawfully committed North Dakota inmates in a county or city correctional facility of such other state. A city or county may contract with another correctional facility in this state for correctional services for purposes of safety, security, health and medical reasons, or for correctional facility administration. A city or county may contract for the confinement of inmates lawfully sentenced by a tribal court. A city or county may contract for correctional facility services

with a privately operated correctional facility. Contracts with private agencies providing correctional facility services may be entered into for up to seven years.

12-44.1-03. Safety and sanitation.

1. Each correctional facility shall comply with state and local fire, sanitation, safety, and health codes.
2. The administrator of a correctional facility, to ensure adequate fire protection, shall install firefighting equipment at appropriate locations throughout the correctional facility.
3. Each correctional facility shall have a smoke detection system approved by the state fire marshal and tested on a regular basis.
4. Designated exits must permit prompt evacuation of inmates and correctional facility staff in an emergency.

12-44.1-04. Administration - Organization - Management. The administrator of each correctional facility shall:

1. Formulate an operations manual, available to all correctional facility staff, which delineates the written policies and procedures for operating and maintaining the correctional facility.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify an administrator in the operations manual to whom all correctional facility staff are responsible. The operations manual shall include the administrator's duties, responsibilities, and authority for the management of the correctional facility staff, inmates, programs, and physical plant.
4. Ensure that correctional facility staff who work in direct and continuing contact with inmates receive correctional facility training as determined and approved by the department of corrections and rehabilitation.

12-44.1-05. Meal payments. An administrator or correctional facility staff member receiving lump sum monthly payments for providing inmate meals shall submit an itemized account of the meal expenses to the governing body of the correctional facility. Any amount of the monthly payment in excess of the itemized account shall be returned to the general operating fund or be given as salary to the person providing the meals, as determined by the governing body of the correctional facility.

12-44.1-06. Grades of correctional facilities.

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade correctional facilities as to length of allowable inmate confinement based upon construction, size, and usage, as follows:
 - a. "Grade one" means a correctional facility for confining inmates not more than one year.
 - b. "Grade two" means a correctional facility for confining inmates not more than ninety days.
 - c. "Grade three" means a correctional facility for confining inmates not more than ninety-six hours.

2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two correctional facilities upon the request of the administrator and the approval of the department of corrections and rehabilitation.

12-44.1-06.1. Correctional facilities standards. Grade two and grade three correctional facilities do not need to provide outdoor recreation areas or exercise rooms separate from dayrooms. Correctional facilities may allow contact visitation subject to the safety, security, and administration requirements of the correctional facility.

12-44.1-06.2. Female inmates in grade one correctional facilities. Expired under S.L. 2003, ch. 666, § 11.

12-44.1-06.3. (Effective through June 30, 2007) Female inmates in grade one correctional facilities. Notwithstanding section 12-44.1-06, a grade one correctional facility that has a contract with the department of corrections and rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the department of corrections and rehabilitation may confine the female inmate for more than one year in accordance with the terms of the contract. A female inmate who has been sentenced to the legal and physical custody of the department of corrections and rehabilitation and who is confined in a grade one correctional facility under a contract with the department of corrections and rehabilitation has the same rights to sentence reduction for good and meritorious conduct and to pardon and parole as an inmate confined in a department of corrections and rehabilitation prisons division facility.

12-44.1-07. Who may be confined in correctional facilities. The following persons may be confined in a correctional facility:

1. Persons charged with offenses or ordered by a court to be detained for trial.
2. Persons committed by a court to confinement in order to secure their attendance as witnesses at the trial of any criminal cause.
3. Persons sentenced to imprisonment upon conviction of an offense and any other person committed or detained as authorized by law.

12-44.1-08. Confinement of state and federal inmates.

1. Grade one correctional facilities may contract for the confinement of offenders in the custody of the department of corrections and rehabilitation if sufficient room is not available at the penitentiary, for purposes of safety, security, discipline, medical care, or when the department of corrections and rehabilitation determines it may be in the best interests of the offender or the department of corrections and rehabilitation.
2. A correctional facility to which a person is sent or committed by legal process issued by or under the authority of the United States shall receive such person into custody for safe detention until discharged under federal law.
3. A correctional facility detaining or confining federal inmates is entitled to compensation in accordance with fee schedules established by the United States.
4. A grade one or grade two correctional facility may be used for the detention of a fugitive from justice in accordance with any act of Congress or the laws of another state. The correctional facility is entitled to reasonable compensation from the officer or jurisdiction regaining custody of the fugitive.

12-44.1-09. Housing of inmates. Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification

system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of this section. In grade one and grade two correctional facilities and, where practicable, in grade three correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

12-44.1-10. Detained witnesses and pretrial detainees. Detained witnesses and persons held in custody awaiting arraignment or trial may not be restricted in their activities to any extent greater than required to maintain order and security and to assure appearance at arraignment or trial. Witnesses and pretrial detainees shall not be required to do labor other than keeping their living areas clean nor shall they be required to participate in correctional facility programs.

12-44.1-11. Commitment papers - Copies - Endorsement. When an inmate is confined by virtue of any process directed to the administrator and the process requires a return to the court from which it was issued, the administrator shall keep a copy of the process with the return made thereon. The copy, certified by the administrator, is prima facie evidence of the administrator's right to retain the inmate in custody. All instruments or copies by which an inmate is committed or released shall be endorsed and filed by the administrator. The file and its contents shall be delivered to the administrator's successor.

12-44.1-12. Inmate personal property. A written, itemized inventory of all personal property taken from an inmate at the time of admission shall be made by correctional facility staff. The property, including money and other valuables, shall be secured and the inmate given a receipt for all property to be held until the inmate's release unless the inmate requests a different disposition in writing. Upon release, the items of inmate personal property shall be compared with the inventory list, and the inmate shall sign a receipt for the property's return. If the inmate is released for transfer to another correctional facility, the correctional officer transporting the inmate shall sign the receipt. The releasing correctional facility shall maintain a copy of the property receipt for its files.

12-44.1-12.1. Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.

1. The correctional facility administrator shall establish an inmate account for each inmate.
2. The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution. The correctional facility administrator may withdraw funds from the inmate's account to pay for the inmate's medical, dental, and eye care costs while the inmate is incarcerated in the correctional facility. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a hearing with the right to correctional facility staff assistance and the right to review by the

correctional facility administrator. No written notice or hearing is required if the withdrawal of funds is being made to meet the inmate's child support obligation.

3. A correctional facility administrator may collect fees from inmates to offset health care costs as follows:
 - a. For a medical visit, up to ten dollars per medical visit made at the request of an inmate.
 - b. For self-inflicted injuries, the total amount of medical costs incurred.
 - c. For necessary health care services, the correctional facility may seek reimbursement from the inmate up to the total amount of health care costs incurred. If the inmate has health insurance coverage, a medical or health care provider must file a claim for reimbursement from the health insurance coverage carrier. A correctional facility may not assess an inmate for any costs associated with an intake health care assessment and related testing or for an examination of an inmate made at the request of the facility.
 - d. For elective health care requested by an inmate and as allowed by correctional facility policy, the inmate is responsible for the amount of the costs incurred.
 - e. A correctional facility may not deny necessary and nonelective medical and health care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.
4. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.
5. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

12-44.1-13. Supervision of inmates.

1. Inmates shall be supervised on a twenty-four-hour basis by trained correctional facility staff.
2. Correctional facility staff shall be located in such proximity to inmate living areas to permit the staff to hear and respond promptly to calls for help.
3. Each correctional facility shall provide for the personal observation of inmates on an irregular but frequent schedule.
4. Each correctional facility shall maintain sufficient staff to perform all functions relating to the security, control, custody, and supervision of inmates.
5. A correctional facility female staff member shall be available at all times during which a female inmate is confined.
6. Inmates shall be prohibited from supervising, controlling, or exerting any authority over other inmates.
7. The correctional facility shall maintain a daily written record of information concerning inmates.

12-44.1-14. Inmate rights. Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each correctional facility shall:

1. Ensure inmates have confidential access to attorneys and their authorized representatives.
2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.
3. Ensure equal access by male and female inmates to programs and services available through the correctional facility.
4. Ensure access to mail, telephone use, and visitors.
5. Ensure that inmates are properly fed, clothed, and housed.
6. Ensure that inmates have adequate medical care.
7. Ensure that inmates may reasonably exercise their religious beliefs.

12-44.1-15. Searches. Searches of inmates may only be conducted:

1. Without undue or unnecessary force or indignity to the person searched.
2. When reasonably necessary to control contraband in the institution or to recover missing or stolen property.

12-44.1-16. Annoyance of inmate prohibited - Penalty. Repealed by S.L. 1997, ch. 113, § 29.

12-44.1-17. Inmate educational and counseling programs. A correctional facility may utilize the resources of the community to provide inmates with available educational, career and technical education, counseling, and work release opportunities. A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

12-44.1-18. Inmate work programs. A correctional facility may maintain a written inmate work assignment plan that provides for inmate employment, subject to the number of work opportunities available and the maintenance of reasonable safety, security, discipline, and correctional facility administration requirements. The inmate work plan may provide for inmate employment in correctional facility maintenance and operation, in public works projects, or in community service projects.

12-44.1-18.1. Inmate work release program. A correctional facility may provide for a work release program for inmates unless the court has ordered that an inmate may not receive work release. Work release projects may include public service and community service projects, and may utilize any particular skill or trade of participating inmates. The correctional facility shall take measures to maintain correctional facility security and safety and to protect the safety of the public.

12-44.1-18.2. Work release program - Room and board costs to be paid by inmate. Any inmate who participates in a work release program shall pay the correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed fifteen dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential

halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

12-44.1-19. Removal of inmate in emergency not an escape. If a correctional facility or any adjoining building shall be on fire or another emergency occurs, and the inmates may be exposed to danger, the correctional facility staff shall remove the inmates to a place of safety, and there confine them as long as necessary to avoid the danger. The removal and confinement shall not be deemed an escape of such inmates.

12-44.1-20. Punishment of inmate. A correctional facility shall adopt rules for safety, security, discipline, and correctional facility administration. If an inmate violates any of the rules of a correctional facility, the correctional facility may impose disciplinary sanctions in accordance with its rules.

12-44.1-21. Prohibited acts.

1. It is unlawful to deliver or administer any alcoholic beverage or controlled substance to a person detained in a correctional facility except for the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a licensed physician and the approval, except in emergency circumstances, of the correctional facility administrator.
2. A person detained in a correctional facility may not possess any controlled substance or alcoholic beverage unless the substance or beverage is prescribed in accordance with the prescription or orders of a licensed physician, and the approval, except in emergency circumstances, of the correctional facility administrator.
3. A person, other than an official or employee of the correctional facility, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. An official or employee of the correctional facility who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. A person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.
4. A person who violates subsection 2 by possessing a controlled substance is guilty of a class B felony. A person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
5. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01.

12-44.1-22. Correctional facility register - Contents. Each administrator is responsible for a correctional facility register in which must be entered such inmate information on such forms as the department of corrections and rehabilitation shall prescribe by rule.

12-44.1-23. Jail report. Repealed by S.L. 1997, ch. 113, § 29.

12-44.1-24. Correctional facility standards - Inspections. The department of corrections and rehabilitation shall:

1. Prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each correctional facility.

4. Appoint a correctional facility inspector qualified by special experience, education, or training to inspect each correctional facility at least once each year to determine if the rules and regulations have been complied with. Inspection must include health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

12-44.1-25. Inspection report - Notice of noncompliance - Hearing.

1. A written report of each inspection pursuant to section 12-44.1-24 shall be made by the correctional facility inspector within thirty days following each inspection.
2. Copies of the report must be sent by the correctional facility inspector to the administrator responsible for the correctional facility and must also be submitted to the department of corrections and rehabilitation for review.
3. The inspection report must specify those respects in which a correctional facility does or does not comply with the required minimum standards and rules. The inspection report of noncompliance must specify the time limits within which such standards or rules are to be met, with consideration being given to the magnitude or seriousness of the deficiencies and their potential effects on the health and safety of inmates, the cost of correction, and other information deemed relevant by the department of corrections and rehabilitation.
4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the department of corrections and rehabilitation to preserve the health and safety of inmates, the period of time for correction may be dispensed with and an order of immediate full or partial closure may be issued by the department of corrections and rehabilitation.
5. Within thirty days after receipt of a notice or order of immediate closure, the administrator of a correctional facility may request a review of the determination by the department of corrections and rehabilitation pursuant to chapter 28-32. The review must be heard not more than forty-five days following the request, unless the period is extended by the department of corrections and rehabilitation.

12-44.1-26. Correctional facility variances.

1. A correctional facility shall comply with the requirements of the rules adopted by the department of corrections and rehabilitation unless a variance has been granted by the department of corrections and rehabilitation. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and an explanation of how the policy of the rule will be served without strict compliance with the rule.
2. The department of corrections and rehabilitation may grant a variance if it is determined that:
 - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the correctional facility.
 - b. The correctional facility will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The department of corrections and rehabilitation shall give written reasons for granting or denying a variance request.
4. In previously existing correctional facilities where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules must be made if the intent of the rule is met and security, supervision of

prisoners, established programs, or the safe, healthful, or efficient operation of the correctional facility is not seriously affected.

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the administrator of a correctional facility shall promptly meet with the department of corrections and rehabilitation's inspection personnel to consider the inspection report. The governing body shall then initiate appropriate corrective action within ninety days following receipt of the inspection report, or may voluntarily close the correctional facility or the objectionable portion.
2. If the governing body of a correctional facility fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the correctional facility or objectionable portion, the director of the department of corrections and rehabilitation is authorized to petition the district court of the judicial district in which the correctional facility is located to order the initiation of corrective action or the closure of the correctional facility. The petition to the district court must include the inspection report regarding the correctional facility. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the director of the department of corrections and rehabilitation by certified mail.
3. A hearing must be held on the petition of the department of corrections and rehabilitation before the district court. An order must be rendered by the district court which dismisses the petition, directs that corrective action be initiated in some form by the governing body, or directs the closure of the correctional facility.

12-44.1-28. Correctional facility files and records confidentiality.

1. The medical, psychological, and treatment records of an inmate are confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as provided in this section. A court may order the inspection of the records, or parts of the records, upon an application to the court and a showing that there is a proper and legitimate purpose for the inspection and the provision of written authorization from the inmate for the inspection. Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, medical, psychological, or treatment records may be inspected by or disclosed to the following persons, organizations, or agencies without prior authorization from the inmate or an order from the court:
 - a. A criminal justice agency as defined in subsection 4 of section 44-04-18.7.
 - b. A division, department, official, or employee of the department of corrections and rehabilitation.
 - c. A federal, state, regional, county, or municipal correctional facility receiving physical custody of an inmate from the original correctional facility.
 - d. A municipal or district court.
 - e. The department of human services, a public hospital or treatment facility, or a licensed private hospital or treatment facility.
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 - a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.

- b. Except as provided in subdivision a of this subsection, a person, organization, or agency receiving confidential records under subsection 1 may not redisclose the records and must maintain the confidentiality of the records.
- 3. The employment or work release status of an inmate is an open record.
- 4. Records with respect to inmate identification, charges, criminal convictions, bail information, and intake and projected release dates are open records.
- 5. Records with respect to a sentenced inmate's institutional discipline and conduct and protective management are exempt records as defined under section 44-04-17.1.
- 6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1.